

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Frontiervision Operating Partners)
Order Setting Basic Service Rates) CSB-A-0692
Winchester, KY (KY0079))
Frontiervision Operating Partners, L.P.) CSB-A-0693
d/b/a/ Adelphia)
Order Setting Basic Service Rates)
Mt. Sterling, KY (KY0066))

MEMORANDUM OPINION AND ORDER

Adopted: November 8, 2004

Released: November 15, 2004

By the Commission:

I. INTRODUCTION

1. On November 10, 2003, the Cities of Mt. Sterling and Winchester, Kentucky ("the Cities"), filed an Application for Review ("Application") of a Media Bureau ("Bureau") Order that granted appeals of local rate orders filed by Frontiervision Operating Partners and Frontiervision Operating Partners, L.P. (collectively, "Adelphia"), the franchised cable operators in those cities.1 The Order held that Adelphia had effected a permissible increase in Basic Service Tier ("BST") rates and that the Cities had erred in attempting to block them. On November 24, 2003, Adelphia filed an Opposition to Application for Review ("Opposition"). After reviewing the record in this case and for the following reasons, we deny the Cities' Application for Review.

2. This case came to the Bureau as two appeals of local rate orders based on very similar facts. In each City, Adelphia filed a Form 1240 in late March 2002, to be effective on July 1 of that year. Each Form was imprecise about Adelphia's intentions. Specifically, each Form justified a Maximum Permitted BST Rate ("MPR") higher than Adelphia was currently charging; stated as its "Rate Structure as of July 1, 2002" the rate it was currently charging; stated that the "Service Rate Change" as of July 1, 2002, would be zero; and left blank Line I10 in the Form for "Operator Selected Rate for Projected Period."2 In other words, in each city Adelphia proposed a specific MPR and purported to justify it, but

1 Frontiervision Operating Partners ("Order"), 18 FCC Rcd 20416 (2003).

2 Order ¶¶ 6-9; Opposition to Appeal of Local Rate Order filed with the Bureau by City of Winchester on July 10, 2003, Attachment II, Exhibit 1; Opposition to Appeal of Local Rate Order filed with the Bureau by City of Winchester on July 10, 2003, Attachment II, Exhibit 1.

was silent about precisely when and how much it would raise the rates it actually charged its BST customers (its "actual rates"). Since neither City took any action on the Form filed with it, Adelphia was authorized to raise its rates on July 1, 2002.³

3. Adelphia did not, however, raise its actual rates for many months. Instead, towards the end of the twelve-month period covered by its Forms, Adelphia notified the Cities that it would shortly raise its actual rates to its previously justified MPR. Each City thereupon ordered Adelphia not to raise its actual rates, and to instead charge the BST rates it had been charging.⁴ Adelphia appealed both orders to the Bureau, which ruled in favor of Adelphia. The Bureau would have sustained the decisions of the Cities rejecting the rate increases so long as the Cities provided a rational basis for doing so.⁵ The Cities did not. We now affirm the Bureau decision.

II. DISCUSSION

4. The Cities claim that the Order erred in its analysis of the Commission's rules and its conclusion that Adelphia is not confined to changing its actual rates only at the end of the initial 90-day review period.⁶ The Cities make no attempt to support this claim, however. We find no error in the Bureau's analysis of this subject.

5. The Cities appear to believe that they were entitled to do nothing when presented with Adelphia's imprecise Forms, but that their inaction somehow prohibited Adelphia's later rate increases. The Cities dispute the Bureau's conclusion that they should have found the Forms "facially incomplete," tolled their review process, and demanded that Adelphia fill in Line I10.⁷ The Cities argue that the Bureau's Order in this respect was in conflict with established Commission policy and case precedent,⁸ involved application of a policy that should be revised,⁹ and contained prejudicial procedural error.¹⁰

6. The Bureau's Order is not inconsistent with established Commission policy. We agree with the Cities, as did the Bureau's Order,¹¹ that they were entitled to receive completed Forms 1240 from the operator. Operators are obligated to fill out their rate forms in their entirety. We also agree with the Bureau's Order that, when they did not, the appropriate remedy was for the Cities to insist on Forms with Line I10 filled in; it was not enough for the Cities to do nothing in the unexpressed belief that the Forms'

³ Order ¶¶ 6, 8 (citing 47 C.F.R. § 76.933(g)(2)).

⁴ *Id.* ¶¶ 7, 9.

⁵ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act*, 9 *FCC Rcd* 4316, 4346 (1994) ¶81.

⁶ Application at 2.

⁷ Order ¶ 15.

⁸ 47 C.F.R. § 1.115(b)(2)(i).

⁹ 47 C.F.R. § 1.115(b)(2)(iii). The Application does not explicitly state any arguments in support of a revision of Commission policy, nor does it explain the apparent inconsistency in the Cities' arguments challenging the Bureau Order as both an application of and a violation of Commission policy.

¹⁰ 47 C.F.R. § 1.115(b)(2)(v).

¹¹ Order ¶ 15.

incompleteness made them ineffective or somehow implied that Adelphia's actual rates would remain unchanged.¹²

7. The Cities also claim that the Bureau Order conflicts with its decision in *CoxCom, Inc.* The Bureau's decision in *CoxCom* states that "the franchising authority and subscribers [must] have notice of the actual rate being implemented."¹³ The Cities appear to believe that the "notice" referenced is a completed Form 1240. As the footnote accompanying the quoted words in *CoxCom, Inc.*, show, however, the "notice" refers to a mailing to customers (and in some cases the franchising authority) and not a Form 1240.¹⁴ Adelphia appears to have given the mailed notice of the rate increase that our rules require.¹⁵

8. The Cities next claim that the Bureau Order contained prejudicial procedural error by shifting the burden of proof from Adelphia to the Cities.¹⁶ We disagree. The only problem with Adelphia's Forms was that they were incomplete because they did not specify an Operator Selected Rate. Section 76.933(g) of our rules provides that the Cities could have tolled their review of the Forms and asked Adelphia to complete them.¹⁷ Once Adelphia did so, the tolling would end and the review process would begin again. The Cities cannot now claim that Adelphia's notice of its intention to raise rates left the Cities with too little time to review Adelphia's Forms.¹⁸ Our rules are premised upon timely review by the franchising authority. Here, none occurred.

9. Finally, the Cities argue that the Bureau, by stating that Adelphia could not raise its rates until April or May 2004, "effectively permitted Adelphia's incomplete [Form] 1240 to remain operational for a period of 22-23 months and thus avoid the annual rate filing requirements in contravention of 47 CFR § 76.922."¹⁹ Our rules require, with exceptions not material here, that "at least twelve months must pass before the . . . next annual adjustment."²⁰ Since Adelphia had implemented a rate adjustment in April 2003 (in Winchester) and in May 2003 (in Mt. Sterling), the Bureau stated that another increase would not be permitted until one year had passed. Our rules do not explicitly require the annual filing of Form 1240s when no rate increase is sought by the operator (except in the event of lowered costs, which

¹² The Application is less than clear about exactly how the Cities interpreted the Forms. At different places, the Application describes the Forms as "incomplete" and "misleading" (Application at 3) on the one hand, and "clear that the actual rate being implemented was" not changing on the other hand. Application at 4 (internal quotation marks deleted).

¹³ Application at 4, quoting *CoxCom, Inc.*, 17 FCC Rcd 7931, 7936-37 (2002) ¶ 14, *application for review denied*, 18 FCC Rcd 6941 (2003).

¹⁴ *CoxCom, Inc.*, 17 FCC Rcd at 7937 n.45, citing 47 C.F.R. §§ 76.933(g)(3), 76.1603(b-d).

¹⁵ Opposition at 3 n.6; Appeal of Mt. Sterling Local Rate Order, Attachment 3, Draft City of Mt. Sterling Order at 1-2; Appeal of Winchester Local Rate Order, Attachment 3, Draft City of Winchester Order at 1-2.

¹⁶ Application at 5.

¹⁷ 47 C.F.R. § 76.933(g), cited in Order ¶ 15.

¹⁸ Application at 5.

¹⁹ *Id.* at 3.

²⁰ 47 C.F.R. § 76.922(e)(1).

is not the case here).²¹ More broadly, we see no harm to consumers that Adelphia's BST rates were unchanged for nearly two years.

III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the Application for Review filed on November 10, 2003, by the Cities of Mt. Sterling and Winchester, Kentucky, of the Media Bureau's Order released on October 10, 2003, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²¹ 47 C.F.R. § 76.922 (e)(2)(ii)(B).